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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/582,397	06/12/2006	Makoto Kihara	292489US0PCT	1172

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OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C.  
1940 DUKE STREET  
ALEXANDRIA, VA 22314

EXAMINER
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ANDERSON, JERRY W

ART UNIT	PAPER NUMBER
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1794

NOTIFICATION DATE	DELIVERY MODE
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08/10/2009

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Office Action Summary</b>	<b>Application No.</b> 10/582,397	<b>Applicant(s)</b> KIHARA ET AL.	
	<b>Examiner</b> JERRY W. ANDERSON	<b>Art Unit</b> 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 28 April 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 10-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 10-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>2/02/2009; 7/23/2009</u> .                                    | 6) <input type="checkbox"/> Other: _____                          |

Continuation of Attachment(s) 3). Information Disclosure Statement(s) (PTO/SB/08), Paper No(s)/Mail Date :9/08/06; 9/07/07; 6/11/08; 2/03/09; 2/03/09; 7/23/09

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**DETAILED ACTION**

1. Examiner acknowledges the receipt of the Applicant's Amendment, mailed 4/28/2009. Claims 1-9 cancelled, claims 10-26 new, specification amended.

**Claim Rejections - 35 USC § 102**

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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3. **Claims 10-19, 21-23, and 25-26 rejected under 35 U.S.C. 102(b) as being anticipated by Rodgers, N.E. et al. (3,851,085)**

4. Regarding claim 10-19, 21-23, and 25-26 Rodgers discloses the claimed invention, including soaking a seed of wheat, rye or oats (line 13, col. 1, '085) in an aqueous steeping medium at 18°-45°C. (lines 40-41, col. 3, '085) The residual steeping medium is separated from the wheat (lines 49-50, col. 3, '085) the drained wheat is washed with fresh steep medium, (lines 59-60, col. 7, '085) the residual steeping medium contains 1.5-2.5 % of wheat solids, concentrated by evaporation or spray drying to form the condensed solubles product (Fig.1, '085) which contains vitamins, nitrogenous compounds in use for human and animal foods, (lines 43-53, col. 8, '085) the remaining wheat grain is processed, and the product can be spray dried or freeze-dried (lines 30-31, col. 18, '085) and used as a baking ingredient. (Fig. 1, '085)

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness

7. **Claims 20 and 24 rejected under 35 U.S.C. 103(a) as being unpatentable over Rodgers, N.E. et al. (3,851,085) in view of Santillo jr., H.D. (5,891,493)**

8. Rodgers is taken as discussed above.

9. Santillo ('493) discloses:

- a. Grains are wheat, corn, oats, rye, rice, and barley, (lines 17-18, col. 1, '493)
- b. Improved seed food composition which can be more easily digested, (lines 15-16, col. 2, '493)
- c. Seed substrate is usable without comminution, grinder may be bypassed, (lines 16-18, col. 3, element 42a Fig. 1, '483)
- d. Soaking of seed material, (lines 45-46, col. 1, '493)
- e. Liquid form collected, (lines 66-67, col. 3, element s 34, 32, and 36, '493)
- f. Solids collected, and dewatered, freeze dried, (lines 2-11, col. 4, '493)

10. Regarding claims 20 and 24, Rodgers discloses the claimed invention, as discussed above, including the production of a food product from the steeping liquor

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(lines 43-53, col. 8, '085) and the washed grain, (lines 30-31, col. 18, '085), but lack the use of barley. Santillo teaches the use of barley. (lines 17-18, col. 1, '493)

11. Rodgers and Santillo are analogous art in that both are concerned with the processing of grains for human consumption.

12. It would have been obvious to one of ordinary skill in the art to modify the hydroprocessing procedure of Rodgers, to incorporate the grains of Santillo, specifically barley, in order to provide Improved seed food composition which can be more easily digested, (lines 15-16, col. 2, '493) and to expand the types of grains that can be processed.

### ***Response to Amendment***

13. Examiner acknowledges the receipt of the Applicant's Amendment, mailed 4/28/2009. Claims 1-9 cancelled, claims 10-26 new, specification amended.

14. The cancellation of claims 1-9 renders all objections and rejections of said claims moot. Objections to and rejections of said claims are hereby withdrawn.

### **Response to Arguments**

15. Applicant's arguments with respect to claim 1-9 have been considered but are moot in view of the new grounds of rejection, based upon the cancellations of said claims and the submission of new claims 10-26

### **Conclusion**

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JERRY W. ANDERSON whose telephone number is (571)270-3734. The examiner can normally be reached on 7 am to 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571) 272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/C. SAYALA/

Primary Examiner, Art Unit 1794

Jwa